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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/656,141

09/08/2003

Johannes Schmid

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06/10/2005

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EXAMINER

TRAN, KHOI H

ART UNIT

PAPER NUMBER

3651

DATE MAILED: 06/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/656,141

Applicant(s)

SCHMID, JOHANNES

Examiner

Khoi H. Tran

Art Unit

3651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

KHOI H. TRAN
PRIMARY EXAMINER

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 05/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1, 6, 7, 10, 11, 14-16, and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Dirksing et al. 6,516,245.

Dirksing '245 discloses a device for mixing substances and method of operating said device for mixing substances per claimed invention. The mixing device 130 comprises a processor unit having local memory for storing mixing formula (Figures 2A and 2C). The processor controls the drive unit and valves for dispensing appropriate amount of substances to be mixed (Figures 2C and 2D). The device comprises a display unit (LCD, not shown, column 4 last paragraph) for displaying a dispensing

formula. The device comprises a measuring device by which portions of substances in quantities determined according to a mixing formula are filled into a container. The processor unit is connected to a communication module for establishing a wireless connection to a data server, i.e. the Internet (column 4, lines 50-54, column 5, first paragraph). The mixing formula can be transmitted to the memory unit from said data server (Figure1). The formula can be manually adjusted to accommodate user's preference. The mixing formula can be filled manually or automatically based on user's input. Dirksing '245 processor connects to a data server (any device that provides data to the processor) for a time period regularly or as needed based on user's predetermined inputs.

In regards to claim 11, when a new formula is introduced to the device 130 it is interpreted to be a new mixing formula. When an existing formula is modified by a user, it is a modifying formula replacing the existing formula.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-5, 9, 12, 13, 17, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dirksing et al. 6,516,245.

In regards to claims 2 and 3 Dirksing '245 discloses all elements per claimed invention. However it is silent as to the specific of the wireless communication module

operates according to a mobile radio protocol or/and according to at least one wireless Local Area Network protocol.

As pointed out from Applicant's specification and the filed Information Disclosure Statement, wireless communication having mobile radio protocol and/or Wireless Local Area Network protocol (W-LAN) are commonly well known.

It would have been obvious for a person with ordinary skill in the art at the time the invention was made, to have provided mobile radio protocol and/or W-LAN protocol for Dirksing '245 wireless communication network because it facilitates a well-known wireless communication protocol for the network.

In regards to claim 4, Dirksing '245 discloses all elements per claimed invention. However it is silent as to the specific of the communication module operates using at least Wireless Application Protocol (WAP) and a Hypertext Transfer Protocol (HTTP).

As pointed out from Applicant's specification and the filed Information Disclosure Statement, WAP and HTTP protocols are commonly well known for providing communication protocols within an Internet environment.

It would have been obvious for a person with ordinary skill in the art at the time the invention was made, to have provided WAP and HTTP protocols for Dirksing '245 wireless Internet communication network because it facilitates well-known communication protocols for the Internet network.

In regards to claims 5, 13, and 20, Dirksing '245 LCD (not shown) can be use to display a reference value of an original color formula and an actual modified formula after the original formula has been changed by a user.

In regards to claim 9, it obvious that the LCD can be combines into the device to form an integrated unit. Such modification is commonly well known.

In regards to claims 12 and 19, it is obvious that the updating of data in the local memory takes place a) before a start of a mixing process; b) at a predefined or at selectable time intervals; c) in response to manual control, or; d) in response to being initiated by the data server from the Internet.

Claims 8 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dirksing et al. 6,516,245 in view of Muscara

Dirksing '245 discloses all elements per claimed invention as explained in the above paragraphs. However, it lacks a scale.

Muscara '268 discloses a mixing device having a scale 17. Muscara '268 teaches that the scale provides accurate measurement of dispensed and mixed product within a receiving container.

It would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have provided to Dirksing '245 with a scale because it facilitates the accurate measuring of dispensed and mixed substances within said mixing device, as taught by Muscara '268.

Response to Arguments

5. Applicant's arguments filed 05/13/2005 have been fully considered but they are not persuasive.

Applicant argued that Dirksing et al. 6,516,245 does not teach connecting of the processor unit of the mixing device to a data server for a certain time. This argument is

not persuasive. Per paragraph 2 above, Dirksing '245 processor is wirelessly connected to a data server for a certain time, e.g. regularly or as needed per customer's predetermined control, for the transmission of mixing data to the processor.

Conclusion

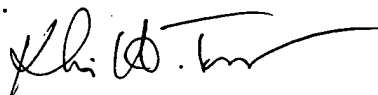
6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoi H. Tran whose telephone number is (571) 272-6919. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Matecki can be reached on (571) 272-6951. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Khoi H Tran
Primary Examiner
Art Unit 3651

KHT
06/09/2005